

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

CL

HOFFMANN-LA ROCHE INC.,

Plaintiff,

v.

TEVA PHARMACEUTICALS USA, INC.  
and TEVA PHARMACEUTICAL  
INDUSTRIES LTD.,

Defendants.

Civil Action No. 07-4284 (SRC) (MAS)  
Civil Action No. 08-4059 (SRC) (MAS)

**STIPULATION OF DISMISSAL OF ACTION WITHOUT PREJUDICE**

**WHEREAS**, Plaintiff Hoffmann-La Roche Inc. ("Roche") initiated civil actions captioned *Hoffmann-La Roche Inc. v. Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries Ltd.*, C.A. No. 07-4284 (SRC)(MAS) on September 7, 2007 and *Hoffmann-La Roche Inc. v. Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries Ltd.*, C.A. No. 08-4059 (SRC)(MAS) on August 12, 2008, in the United States District Court for the District of New Jersey, consolidated under 07-4284, ("the New Jersey Action") for patent infringement under 35 U.S.C. § 271(e)(2) against Defendants Teva Pharmaceuticals USA, Inc., and Teva Pharmaceutical Industries Ltd.

**WHEREAS**, Plaintiffs allege that Defendants have infringed U.S. Patent Nos. 7,192,938 ("the '938 patent") and 7,410,957 ("the '957 patent") by filing ANDA No. 79-000 seeking approval from FDA to engage in the commercial manufacture, use, or sale of 150 mg tablets of Ibandronate.

**WHEREAS**, Defendants deny that they infringed the '938 and '957 patents by filing ANDA No. 79-000 and allege that the '938 and '957 patents are invalid;

**WHEREAS**, Plaintiff and Procter & Gamble Co. have initiated a civil action captioned *The Procter & Gamble Company and Hoffman-La Roche Inc. v. Teva Pharmaceuticals USA, Inc.* on September 26, 2008 in the United States District Court for the District of Delaware, (the “Delaware Action”) alleging that Teva Pharmaceuticals USA, Inc. has infringed the ‘938 patent by filing an amendment to ANDA No. 79-215 seeking approval from the FDA to engage in the commercial manufacture, use, or sale of 150 mg tablets of risedronate.

**WHEREAS**, Defendants have withdrawn ANDA No. 79-000, and the New Jersey Action has therefore been rendered moot.

**WHEREAS**, Roche has produced substantial numbers of highly confidential documents in the New Jersey action and has classified the same as “Protected Information” pursuant to the Stipulated Discovery Confidentiality Order entered April 3, 2008 (“the Confidentiality Order”).

**WHEREAS**, Paragraph 24 of the Confidentiality Order requires that Defendants destroy or return all of Roche’s Protected Information within sixty days after the conclusion of the New Jersey action.

**WHEREAS**, both Plaintiff Roche and Defendants wish to avoid the undue burden and expense associated with re-production of Roche’s Protected Information in the Delaware Action and Plaintiff Roche does not object to Defendants’ use of the same in the Delaware Action as if produced therein and subject to the provisions of the Stipulated Protective Order entered in the Delaware Action on August 13, 2009.

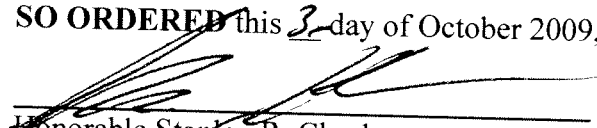
**THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, the attorneys of record for the above filed action, subject to approval of the Court, that:

1. All claims and defenses in the New Jersey Action are dismissed without prejudice.
2. Defendants are relieved from immediate compliance with Paragraph 24 of the Confidentiality Order entered in this action.
3. Roche consents to Defendants' use of Roche's Protected Information in the Delaware Action, subject to the provisions of the Stipulated Protective Order entered in the Delaware Action on August 13, 2009 as if produced therein.
4. Each party shall be responsible for its own fees and costs.

**SO STIPULATED** this 28<sup>th</sup> day of October 2009:

<p><u>s/ Sheila F. McShane</u> <b>For Plaintiff Hoffmann-La Roche Inc.:</b></p> <p>David E. De Lorenzi, Esq. Sheila F. McShane, Esq. GIBBONS P.C. One Gateway Center Newark, NJ 07102-5310 (973) 596-4500 (Voice) (973) 639-6462 (Fax)</p> <p>Mark E. Waddell, Esq. LOEB &amp; LOEB LLP 345 Park Avenue New York, NY 10154-1895 (212) 407-4000 (Voice) (212) 407-4990 (Fax)</p>	<p><u>s/ Mayra V. Tarantino</u> <b>For Defendants Teva Pharmaceutical Industries Ltd., and Teva Pharmaceuticals USA, Inc.:</b></p> <p>Allyn Z. Lite, Esq. Michael E. Patunas, Esq. Mayra V. Tarantino, Esq. LITE DEPALMA GREENBERG &amp; RIVAS, LLC. Two Gateway Center, 12th Floor Newark, New Jersey 07102 (973) 623-3000 (Voice) (973) 623-0858 (Fax)</p> <p>James Galbraith, Esq. A. Antony Pfeffer, Esq. KENYON &amp; KENYON LLP One Broadway New York, New York 10004-1050 (212) 425- 7200 (Voice)</p>
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**SO ORDERED** this 3<sup>rd</sup> day of October 2009,

  
Honorable Stanley R. Chesler  
United States District Judge